

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION CORPORATION,	Adv. Pro. No. 08-01789 (CGM)
Plaintiff-Applicant, v.  BERNARD L. MADOFF INVESTMENT SECURITIES LLC,	SIPA Liquidation  (Substantively Consolidated)
Defendant.	
In re:  BERNARD L. MADOFF,  Debtor.	
IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Chapter 7 Estate of Bernard L. Madoff,  Plaintiff, v.  MERRILL LYNCH BANK (SUISSE) SA  Defendant.	Adv. Pro. No. 11-02910 (CGM)

**THIRD AMENDED STIPULATION AND ORDER**

Plaintiff Irving H. Picard (the “Trustee”), trustee for the substantively consolidated liquidation proceeding of Bernard L. Madoff Investment Securities LLC under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III (“SIPA”), and the chapter 7 estate of Bernard L. Madoff, and defendant Merrill Lynch Bank (Suisse) SA (“Defendant,” and with the Trustee, the “Parties”), by and through their respective and undersigned counsel, state as follows:

**WHEREAS**, on November 22, 2011, the Trustee commenced adversary proceeding

number 11-02910 (the “Action”) against Defendant to, among other things, recover transfers allegedly received from Fairfield Sentry Limited and Fairfield Sigma Ltd., pursuant to 11 U.S.C. § 550;

**WHEREAS**, on July 6, 2014, the District Court entered an Opinion and Order ruling on extraterritoriality and international comity issues (the “District Court ET Decision”) and returned certain matters to the Bankruptcy Court for further proceedings consistent with the District Court ET Decision. *See SIPC v. BLMIS (In re Madoff)*, 513 B.R. 222 (S.D.N.Y. 2014);

**WHEREAS**, on November 22, 2016, the Bankruptcy Court issued a Memorandum Decision Regarding Claims to Recover Foreign Subsequent Transfers (the “Bankruptcy Court ET Decision”) dismissing certain claims to recover transfers allegedly received from Fairfield Sentry Limited (among other transferees) pursuant to 11 U.S.C. § 550 on grounds of international comity. *See Picard v. Bureau of Labor Ins. (SIPC v. BLMIS)*, Adv. Pro. No. 08-01789 (SMB), 2016 WL 6900689 (Bankr. S.D.N.Y. Nov. 22, 2016);

**WHEREAS**, the Bankruptcy Court ET Decision dismissed the claim against Defendant;

**WHEREAS**, on February 25, 2019, the Court of Appeals for the Second Circuit issued an order, *In re Picard*, 917 F.3d 85 (2d Cir. 2019) (the “ET and Comity Decision”) which, *inter alia*, vacated the Bankruptcy Court ET Decision;

**WHEREAS**, on August 29, 2019, Defendant and defendants in other adversary proceedings whose actions were dismissed by the Bankruptcy Court ET Decision filed a Petition for a Writ of Certiorari in the Supreme Court, which sought review of the ET and Comity Decision and which extended the stay of the Second Circuit’s mandate until the Supreme Court’s final disposition. *See Petition for Writ of Certiorari, HSBC Holdings PLC v. Picard*, No. 19-277 (Aug. 29, 2019), 2019 WL 4190391;

**WHEREAS**, on December 20, 2019, in adversary proceedings that are unrelated to the Action, the Trustee filed unopposed petitions for permission to appeal pursuant to 28 U.S.C. § 158(d)(2)(A), which respectively sought (i) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision denying the Trustee’s motion for leave to file amended complaint in one adversary proceeding, *Picard v. Citibank, N.A.*, 608 B.R. 181 (Bankr. S.D.N.Y. 2019), and (ii) a direct appeal to the Second Circuit of the Bankruptcy Court’s memorandum decision granting, in part, the motion to dismiss the Trustee’s amended complaint in another adversary proceeding, *Picard v. Legacy Capital Ltd.*, 548 B.R. 13 (Bankr. S.D.N.Y. 2016) (together, the “Good Faith Appeals”);

**WHEREAS**, on April 23, 2020, the Court of Appeals for the Second Circuit granted the Trustee’s petitions for the Good Faith Appeals. *See In re BLMIS LLC*, Case No. 19-4282 (2d Cir. Apr. 23, 2020), ECF No. 29; *In re BLMIS LLC*, Case No. 19-4283 (2d Cir. Apr. 23, 2020), ECF No. 25;

**WHEREAS**, on June 1, 2020, the Supreme Court denied Defendants’ Petition for a Writ of Certiorari concerning the Second Circuit’s ET and Comity Decision. *See Order, HSBC Holdings PLC v. Picard*, 140 S.Ct. 2824 (2020);

**WHEREAS**, also on June 1, 2020, the Court of Appeals for the Second Circuit issued the mandate in respect of the ET and Comity Decision, *In re Picard*, No. 17-2992 (2d Cir. June 1, 2010), ECF Doc No. 1582, vacating the judgments of the Bankruptcy Court in connection with the Bankruptcy Court ET Decision and remanding the matters for further proceedings consistent with the ET and Comity Decision;

**WHEREAS**, on August 30, 2021, the Second Circuit issued a consolidated decision in the Good Faith Appeals. *In re BLMIS LLC*, 12 F.4th 171 (2d Cir. 2021) (the “Good Faith

Decision”);

**WHEREAS**, on October 13, 2021, the Court of Appeals for the Second Circuit issued the mandate in respect of the Good Faith Decision, vacating the District Court’s consolidated good faith decision, *SIPC v. BLMIS*, 516 B.R. 18 (S.D.N.Y. 2014), as well as the Bankruptcy Court’s decisions dismissing *Picard v. Citibank, N.A.*, Adv. Pro. No. 10-05345 (CGM) (Bankr. S.D.N.Y.) and *Picard v. Legacy Capital Ltd.*, Adv. Pro. No. 10-05286 (CGM) (Bankr. S.D.N.Y.). *See* Mandate, Case No. 20-1333 (2d Cir. Oct. 13, 2021), ECF No. 197; Mandate, Case No. 20-1334 (2d Cir. Oct 13, 2021), ECF No. 187;

**WHEREAS**, on February 22, 2022 the Court granted a Stipulation and Order setting a June 16, 2022 deadline for the Defendant to respond to the complaint in the Action, an August 15, 2022 deadline for the Trustee to respond to any motion to dismiss, and a September 14, 2022 deadline for the Defendant to file a reply in support of any such motion. *See* ECF No. 108; and

**WHEREAS**, on May 27, 2022 the Court granted an Amended Stipulation and Order setting a July 28 deadline for the Defendant to respond to the complaint in the Action, a September 26, 2022 deadline for the Trustee to respond to any motion to dismiss, and an October 26, 2022 deadline for the Defendant to file a reply in support of any such motion. *See* ECF No. 112.

**WHEREAS**, on July 15, 2022 the Court granted a Second Amended Stipulation and Order setting an October 7, 2022 deadline for the Trustee to file an amended complaint, a November 21, 2022 deadline for the Defendant to respond to the complaint in the Action, a January 5, 2023 deadline for the Trustee to respond to any motion to dismiss, and a February 6, 2023 deadline for the Defendant to file a reply in support of any such motion. *See* ECF No. 113.

**IT IS HEREBY STIPULATED AND AGREED**, that, the deadline for the Defendant to respond to the amended complaint in the Action shall be November 21, 2022. If Defendant files a motion to dismiss the complaint, such motion shall set forth any and all grounds for dismissal required to be asserted at the pleading stage. The deadline for the Trustee to respond to the motion shall be January 20, 2023, and the deadline for the Defendant to file a reply shall be February 20, 2023.

**IT IS HEREBY STIPULATED AND AGREED**, that if Defendant files a motion to dismiss the complaint, then the Parties shall request oral argument on the motion at the Court's first available convenience.

Dated: October 3, 2022  
New York, New York

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**/s/ Cecelia G. Morris**

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**Hon. Cecelia G. Morris**  
**U.S. Bankruptcy Judge**

above, for the preparation of medicaments intended for the treatment of cancers, such as breast cancers.

The present invention also relates to the use of an antibody as defined above, for implementing a method for *in vitro* diagnosis of cancers in humans or animals, in particular breast cancers.

According to an advantageous embodiment, the present invention relates to the use of a polyclonal antibody as defined above directed against the phosphorylated epitope of sequence SEQ ID NO: 2, for implementing a method for *in vitro* diagnosis of cancers in humans or animals, in particular breast cancers.

The present invention also relates to a method for *in vitro* diagnosis of cancers, in particular breast cancers, in humans or animals, characterized in that it comprises:

- placing an antibody as defined above in the presence of a biological sample taken from an individual, said antibody if appropriate being fixed on a solid support,
- the detection of a peptide sequence as defined above, which can be present in the biological sample using labelled reagents, in particular labelled antibodies, recognizing either the antibody bound to said peptide sequence, or the peptide sequence bound to said antibody in the complexes formed during the previous step between the antibody and the peptide sequence which can be present in the biological sample, this occurring, if appropriate, after suitable rinsing of the solid support.

The present invention also relates to a method of *in vitro* prognosis for cancers, in particular breast cancers, in humans or animals, characterized in that it comprises:

- placing an antibody such as defined above in the presence of a tumor sample taken from an individual, said antibody if appropriate being fixed on a solid support,
- the detection of a peptide sequence as defined above, which can be present in the biological sample, using labelled reagents, in particular labelled antibodies, recognizing either the antibody bound to said peptide sequence, or the peptide sequence bound to said antibody in the complexes formed during the previous step between the antibody and the peptide sequence which can be present in the biological sample, this occurring, if appropriate, after suitable rinsing of the solid support.

The present invention also relates to the use of the above-mentioned antibodies of the invention directed against a phosphorylated sequence of CDC25B in the context of implementing a diagnostic test the aim of which is to detect in tumoral samples the presence or not of this phosphorylated sequence, for the purpose of a diagnosis or a prognosis.

The present invention also relates to a method for screening a molecule capable of binding to a peptide sequence as defined above, said molecule being able to be used as an antitumoral agent or antiproliferative agent both in cells in culture and in a living organism or also against infectious agents (parasites, pathogenic fungi), characterized in that it comprises:

- placing said molecule in the presence of the above-mentioned peptide sequence, and
- the detection of the binding of said molecule by the use of appropriate competition methods, in particular by competition with the bond of an antibody as defined above.

The bond between said molecule and the phosphorylated peptide sequence can be detected according to the following method: the phosphorylated sequence (phosphorylated substrate) is bound to a solid support; the incubation with the above-mentioned antibody in solution then allows its fixation which is revealed by the use of a secondary antibody carrying a chromophore or by the direct labelling of the primary antibody (antibody of the invention directed against the phosphorylated sequence). The simultaneous incubation with a compound capable of binding said phosphorylated sequence leads to its fixation and the masking of the site recognized by the antibody. Visualization of this interaction can therefore be carried out and quantified by the reduction in the binding of the antibody.

## DESCRIPTION OF THE FIGURES

Figure 1 represents a mass spectrum of the monophosphorylated peptide, 353-S<sub>(p)</sub>VTPPEEQQEAEFPK-367. The abscissa axis corresponds to the ratio m/z and the ordinate axis corresponds to the percentage of relative abundance.

Figures 2A, 2B and 2C represent the results of western blot analyses with the monoclonal antibody SE96 (Figure 2A), with the anti- $\alpha$ MBP antibody (New England Biolabs) (Figure 2B) and with the anti- $\alpha$ Aurora A antibody (see French Patent Application 02/07212) (Figure 2C). In these figures, the first lane corresponds to the Aurora A protein kinase; the second lane to a recombinant protein MBP-CDC25B; the third lane corresponds to the protein kinase Aurora A and to the recombinant protein MBP-CDC25B and the fourth lane corresponds to MBP alone.

Figures 3a to 3h represent indirect immunofluorescence images produced in HeLa cells with the SE96 antibody.

In Figures 3a, 3c, 3e and 3g, the HeLa cells have been fixed and used to carry out an immunofluorescence analysis with the SE96 antibodies and they have also been stained with DAPI.

In Figures 3b, 3d, 3f and 3h, the HeLa cells have been fixed and used to carry out an immunofluorescence analysis with the SE96 antibodies.

The HeLa cells of Figures 3c and 3d were put in competition with the phosphorylated peptide which served for the immunization (SEQ ID NO: 2); the HeLa cells of Figures 3e and 3f were put in competition with the non-phosphorylated peptide (QNKRRRSVTPPEEQ); and the HeLa cells of Figures 3g and 3h were put in competition with a phosphorylated peptide with no relation to the serine 353 (MEVEEELS<sub>(p)</sub>PLALGR).

These figures demonstrate that the labelling observed with the SE96 antibody is indeed eliminated by the immunogenic peptide in its phosphorylated form, but not by the same non-phosphorylated peptide. Moreover, an irrelevant phosphorylated peptide has no competitive effect, demonstrating the specificity vis-à-vis the phosphorylated sequence and not the presence of the phosphate group only.

## METHODS AND RESULTS

### **The recombinant Aurora A kinase phosphorylates CDC25B3 on the serine 353**

The CDC25B3 recombinant protein is phosphorylated *in vitro* by the recombinant Aurora A kinase. The product of the phosphorylation reaction was analyzed by mass spectrometry after excision of the electrophoresis gel and triptych digestion. The MS/MS spectrum of the monophosphorylated peptide, 353-SVTPPEEQQQEAEPK-367 is shown in Figure 1. Its analysis indicates that it is the serine 353 which is phosphorylated by the kinase.

Similarly, it has been shown that the recombinant Aurora A kinase phosphorylates CDC25B1 on the serine 339, CDC25B2 on the serine 312, CDC25B4 on the serine 374 and CDC25B5 on the serine 361.

### **Production of antibodies against the CDC25B protein phosphorylated by the Aurora A kinase**

The peptide of sequence QNKRRRS(p)VTPPEEQ (SEQ ID NO: 2) was used for the immunization of rabbits. After sacrificing the animals, the serum was purified by chromatography in two steps: the first on a phosphorylated peptide column in order to retain the specific antibodies, then the second on a column of the same non-phosphorylated peptide of sequence QNKRRRSVTPPEEQ, so as to purify, in the eluate, the specific antibodies of the phosphorylated form. The recognition of the phosphorylated peptide by the antibodies was validated in an ELISA test. In the remainder of the document, these antibodies are designated by the name SE96.

### **The SE96 antibody recognizes CDC25B phosphorylated by Aurora A**

Recombinant proteins CDC25B-MBP (Maltose Binding protein) or MBP alone were incubated in the presence or not of Aurora A kinase. The samples were then analyzed by protein transfer (western blot) with the SE96 antibody and antibodies allowing the recognition of MBP and Aurora A. As shown in Figure 2, the CDC25B protein phosphorylated by Aurora A is recognized by SE96, which validates the use of this antibody in a Western blot test.

**The CDC25B protein phosphorylated on the serine 353 is located at the level of the centrosome**

HeLa cells were fixed and used to carry out an immunofluorescence analysis with the SE96 antibodies. The cells were also stained with 4'-6 diamino-2-phenylindole (DAPI) in order to locate the nucleus. The images shown in Figure 3 are representative of observations of a large number of cells. They show that the CDC25B protein phosphorylated on the serine 353 is located at the level of the centrosomes of the cells undergoing mitosis. This labelling is abolished when there is competition with the phosphorylated peptide which served for the immunization (SEQ ID NO: 2), but not with the non-phosphorylated peptide (QNKRRRSVTPPEEQ) or with a phosphorylated peptide with no relation to the serine 353 (MEVEELS(p)PLALGR). These observations validate the use of this reagent in immunofluorescence.

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